INDEX

	Page
NATURE OF THE CASE	1-3
REASONS FOR NOT GRANTING THE WRIT	3-7
CERTIFICATE OF SERVICE	8

CITATIONS

Case	Page
Barton v. Forsyth, 5 Wall 109, 18 L.Ed. 545 (1866)	4
Coastal Petroleum Company v. Trustees of Internal Improvement Trust Fund of the State of Florida, 489 F.2d 777	2
General Talking Pictures Corp. v. Western Electric, 58 S.Ct. 849, 304 U.S. 175 (1938)	6
Goldstein v. Cox, 396 U.S. 471 90 S.Ct. 671 (1970)	4
New Haven Inclusion Cases, 399 U.S. 392, 90 S.Ct. 2054 (1970)	5
Parr v. U.S., 76 S.Ct. 912, 100 L.Ed. 1377 (1956)	4
Railroad Retirement Board v. Alton Railroad Co., 295 U.S. 330, 79 L.Ed. 468 (1934)	5
U.S. v. Johnston, 268 U.S. 220, 45 S.Ct. 496 (1925)	6
United States v. United Mine Workers of America, 330 U.S. 258, 91 L.Ed. 884 (1946)	5
Youngstown Sheet and Tube Co. v. Sawyer, 72 S.Ct. 863, 343 U.S. 579, 96 L.Ed. 1153 (1948)	5

CITATIONS (cont.)

	Page
Statutes and Rules:	
Florida Appellate Rules, Rule 4.61	3
Florida Statutes §2503.1	3
Supreme Court Rules, Rule 19(b)	3
28 U.S.C., §1254(1), Rule 20	4

in the
Supreme Court
of the
United States

October Term, 1973

NO. 73-1941

COASTAL PETROLEUM COMPANY,
Petitioner,

vs.

TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA,
Respondent.

Response to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

NATURE OF THE CASE

"This is a case in which Coastal Petroleum Company brought suit in August, 1968, in the Federal District Court, against certain federal

officials and state officials, seeking to compel the issuance of a federal permit for drilling for limestone under its Drilling Lease 248. The Trustees of the Internal Improvement Trust Fund, defendants in the case, filed on April 23, 1969, an answer containing a counterclaim alleging that Lease 248 should be declared void for failure of Coastal to comply with the drilling obligations of the lease. Coastal then, on May 12, 1969, filed a counterclaim to that counterclaim, seeking a declaration that all three of its Leases, Lease No. 224-A, Lease 224-B and Lease 248 be declared valid and binding leases and asserting that Coastal had fully complied with each and every term, condition and obligation of the leases. On May 6, 1969, the Trustees filed an action in state court seeking a declaration that all three leases should be declared void as against public policy; this action was then removed to the federal court and consolidated with Coastal's earlier action there. The leases were held valid by the District Court.

On appeal by the Trustees, all issues have been eliminated except the question as to whether Coastal's three leases are void for a failure by Coastal to comply with the drilling requirements."

Coastal Petroleum Company v. Trustees of the Internal Improvement Trust Fund of the State of Florida, 489 F.2d 777, at page 781.

Hereafter Petitioners will be designated as "Coastal," and Respondent as "Trustees."

The United States Court of Appeals for the Fifth Circuit determined that this case involved questions or propositions of the law of the State of Florida which are determinative of the cause, and that there appeared to be no clear controlling precedents in the decisions of the Supreme Court of Florida. On December 6, 1973, that Court certified—in the prescribed form—questions of law to the Supreme Court of Florida pursuant to §25.031, Florida Statutes 1973, and Rule 4.61 of the Florida Appellate Rules. On March 29, 1974, upon Coastal's Petition for Rehearing, one sentence of the certificate was deleted.

As of the date of filing this response to the petition for a writ of certiorari, both the Trustees and Coastal have filed their respective briefs in the Supreme Court of Florida pursuant to said certification. A Petition for Stay of Proceedings in that Court, sought by Coastal, was denied.

REASONS FOR NOT GRANTING THE WRIT

We respectfully suggest this Court is without jurisdiction to grant certiorari in the current posture of the case. While we concede that Rule 19(b) of the Supreme Court Rules is not intended to be all inclusive, it clearly draws the parameters of the Court's certiorari jurisdiction in reviewing decisions of courts of appeal:

> "* * * Where a court of appeals has **rendered a decision** in conflict with the decision of another court of appeals on the same matter; or has **decided** an important state or territorial question in a way in conflict with applicable state or territorial law; or has **decided** an important ques-

> tion of federal law which has not been, but should be, settled by this court; or has **decided** a federal question in a way in conflict with applicable decisions of this court; * * *" (Emphasis added)

Here, the Court of Appeals has neither rendered a decision, nor decided any state question within the meaning of the above rule. It has, instead, availed itself of the Florida procedure for obtaining, in the best possible way, the information necessary to render a decision, or to decide questions of state law as may be necessary. Therefore, the Petitioner's complaints are clearly premature and anticipatory. It may be that the Florida Supreme Court will decide the question in strict accordance with the Petitioner's views. It may be that the Petitioner will not be aggrieved by the ultimate decision of the Court of Appeals. There is no way in which this Court can, or should, anticipate the future.

Essentially, the Court's power of review is limited to final decisions, **Barton v. Forsyth,** 5 Wall 109, 18 L.Ed. 545 (1866); **Parr v. U.S.,** 351 U.S. 513, 100 L.Ed. 1377 (1956); and piecemeal review is not favored, **Goldstein v. Cox,** 396 U.S. 471.

This policy finds only the narrowest of exceptions in this Court's implementation of a Congressional grant of power (28 U.S.C. §1254(1)), by Rule 20. That Rule, which provides for certiorari review before judgment, states:

> "A writ of certiorari to review a case pending in a court of appeals, before judgment is given

> in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation of normal appellate processes and to require immediate settlement in this Court." (Emphasis added.)

The cases cited by the Court in that Rule indicate that this extraordinary writ is reserved for national emergencies, nationwide work stoppages, or other circumstances of cataclysmic moment requiring an immediate decision by this Court. See **Railroad Retirement Board v. Alton Railroad Co.**, 295 U.S. 330, 79 L.Ed. 468 (1934); **United States v. United Mine Workers of America**, 330 U.S. 258, 91 L.Ed. 884 (1946); **Youngstown Sheet and Tube Co. v. Sawyer**, 72 S.Ct. 863, 343 U.S. 579, 96 L.Ed. 1153, and **New Haven Inclusion Cases**, 399 U.S. 392, 90 S.Ct. 2054 (1970).

While the case at hand is certainly of public importance, the factual situation is not of **imperative** public importance. The oil leases, to which the Petitioner seeks so tenaciously to cling, have lain neglected by it for as much as thirty years. In fact, at the beginning of this litigation (over five years ago), the Petitioner, not the Respondent, sought and obtained a stay from the District Court allowing Coastal to discontinue drilling until the termination of this litigation. It ill-behooves the Petitioner now to seek a power reserved for real emergencies when a large measure of its current status was self-invoked.

Because the two grounds raised by the Petitioner in support of its writ are patently without merit, we will only briefly respond to them.

First, Petitioner claims the Fifth Circuit has **certified** both questions of fact and law to the Supreme Court of Florida. This is simply not so. A review of the **certification** reveals that it contains pure questions of law. It is true that the introductory comments by the Fifth Circuit, prior to the actual **certification**, do state that the Supreme Court of Florida has plenary power to determine whether there is, from its Florida point of view, an adequate basis for answering the questions. Indeed, all of the quotes by the Petitioner in its brief are from the introductory comments, rather than from the **certificate** itself. It is the **certificate**, and it alone, that the Florida Court will consider and answer. The statutory and rule provisions of Florida relating to the certification prescribe the procedure for the certification itself, and in all respects the Fifth Circuit has so complied. Obviously, the Florida Supreme Court will act only within its jurisdictional orbit and transmit its answers—to the **questions of law**—to the Fifth Circuit. As Coastal, "no doubt unwittingly," states in its Petition (pg. 16), the Florida Court "must accept the **certificate** without question." (Emphasis added.)

Finally, the Petitioner states that the Respondent has raised certain issues on appeal for the first time, and in raising such a ground, it impliedly asks this Court to re-examine the record for the purpose of determining whether the issues were raised in the court below.

This Court has made it more than clear that it will never grant a writ of certiorari merely to review the evidence or inferences drawn from it. See **U.S. v. Johnson**, 268 U.S. 220, (1925) 45 S.Ct. 496, and **General Talking Pictures Corp. v. Western Electric**, 58 S.Ct. 849, 304 U.S.

175 (1938). Thus, we omit what would be a lengthy delineation of factual inaccuracies in Coastal's assertions on this point. In any event, Coastal's appropriate remedy is to await the judgement of the Court of Appeals, and then attack further if it be so advised. The asserted premise of the Petition for Writ of Certiorari will not be known to exist—if ever—until then.

For the foregoing reasons, we strongly urge that this Court deny Petitioner's request for a writ of certiorari.

Respectfully submitted,

R. J. BECKHAM
BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130

CAROLE A. GARDINER,
Of Counsel
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorneys for Respondent

By

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of Respondent's Response to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit has been furnished by United States Mail to Irving R. M. Panzer, Esq., 1735 DeSales Street, N. W., Washington, D.C.; C. Dean Reasoner, Esq., 800 17th Street, N. W., Washington D.C.; Charlie Luckie, Jr., Esq., P.O. Box 1531, Tampa, Florida and Joseph C. Jacobs, Esq., 305 South Gadsden Street, Tallahassee, Florida, this 23 day of July, 1974.

By